Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Implementation of the	)	
Pay Telephone Reclassification and	)	CC Docket No. 96-128
Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

FOURTH ORDER ON RECONSIDERATION AND ORDER ON REMAND

Adopted: January 28, 2002 **Released:** January 31, 2002

By the Commission:

I. Introduction

1. In this order, the Commission revisits the issue of pay telephone compensation pursuant to the remand in the *Illinois* decision.[1] Below, we redetermine aspects of the compensation to be paid to payphone service providers (PSPs) by interexchange carriers (IXCs) and local exchange carriers (LECs) during the period from November 7, 1996 to October 6, 1997, which is commonly referred to as the "interim period." Among other things, we address in this order a new estimate of completed access charge and subscriber 800 calls per payphone per month,[2] an adjusted default compensation amount per call, the issue of compensation for 0+ and inmate calls, interest payments, and a number of other matters. We do not resolve several pending issues at this time. In particular, we do not resolve the allocation among the IXCs and LECs of the per payphone/per month payment due to the PSPs because we find that the record contains insufficient data to allow us to make that determination. We have asked each of the Regional Bell Operating Companies (RBOCs) to provide us with additional data, and we will issue a further order upon receipt and analysis of that data.

II. Background

2. In a series of orders starting in 1996,[3] the Commission promulgated pay telephone service regulations to implement section 276 of the Communications Act of 1934, as amended.[4]

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[1] *Illinois Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), *clarified on reh'g*, 123 F.3d 693 (D.C. Cir. 1997), *cert. denied sub nom. Virginia State Corp. Comm'n v. FCC*, 523 U.S. 1046 (1998) (hereinafter *Illinois)*.

[2] There are four types of calls that originate from payphones that are not at issue in this order: coin calls, directory assistance calls, Telecommunications Relay Service (TRS) calls, and 0- calls. A caller originates a 0- call by dialing 0 and then waiting for operator intervention. *See First Report and Order*, 11 FCC Rcd at 20549, 20551; *Third Report and Order*, 14 FCC Rcd at 2551 n. 16, 2568.

[3] *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Notice of Proposed Rulemaking*, 11 FCC Rcd 6716, 6721 (1996) (hereinafter *Payphone NPRM*); *Report and Order*, 11 FCC Rcd 20541 (1996) (hereinafter *First Report and Order*); *Order on Reconsideration*, 11 FCC Rcd 21233 (1996) (hereinafter *First Reconsideration Order*), *aff'd in part and remanded in part sub nom. Illinois*, 117 F.3d at 555; *Second Report and Order*, 13 FCC Rcd 1778 (1997), *aff'd in part and remanded in part sub nom. MCI v. FCC*, 143

This implementation includes a system of per-call compensation to ensure, as required by Section 276, that every PSP receives fair compensation for each and every completed interstate and intrastate payphone call. However, the per-call compensation plan did not take effect immediately due to the fact that per-call tracking capabilities were not installed at the time the Commission first implemented Section 276.[5] Accordingly, instead of a per-call compensation plan, the Commission instituted a compensation plan to cover the interim period (November 7, 1996 through October 6, 1997), and under this plan, IXCs and LECs collectively were required to pay $45.85 per payphone per month, which was the product of our estimate of the average number of compensable access code and subscriber 800 calls originated monthly from a payphone multiplied by a rate per call of $0.35.

3. On appeal, the court held *inter alia* that the $0.35 default rate was arbitrary, that our method of allocating the charge among the various IXCs was arbitrary, and that we had improperly failed to provide compensation for 0+ and inmate calls.[6] With regard to the Commission's justification for using a $0.35 surrogate rate because the costs of coin calls, subscriber 800 calls, and access code calls allegedly are similar, the court found that the "problem with the FCC's decision is that the record in this case is replete with evidence that the costs of local coin calls versus 800 and access code calls are *not* similar," and the Commission "failed to respond to any of the data showing that the costs of different types of payphone calls are not similar."[7] The court also found the Commission's failure to provide interim compensation for 0+ calls and inmate calls to be inconsistent with the language of Section 276 that fair compensation be provided for "each and every completed . . . call."[8] In addition, the court found that the Commission acted arbitrarily and capriciously in requiring interim compensation only from carriers with annual toll revenue over

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F.3d 606 (D.C. Cir. 1998) (hereinafter *MCI*); *Third Report and Order and Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd 2545 (1999)(hereinafter *Third Report and Order*), reconsideration petitions pending, *aff'd sub nom. American Pub. Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000) (hereinafter *American*); *Second Order on Reconsideration*, 16 FCC Rcd 8098 (2001) (hereinafter *Second Reconsideration Order*), *Third Order on Reconsideration and Order on Clarification*, 16 FCC Rcd 20922 (2001) (hereinafter *Third Reconsideration Order*).

[4] Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 276). Section 276 requires that the Commission "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation." The complete text of Section 276 is provided as Appendix A of the *First Report and Order*, 11 FCC Rcd at 20713-14.

[5] The provision of payphone-specific coding digits is a prerequisite to per-call compensation payments to PSPs for payphone calls. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Order*, 14 FCC Rcd 836, 837 (Network Serv. Div. 1998). The Bureau noted that as of October 7, 1997, only 60 percent of payphones were able to provide payphone-specific coding digits. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Memorandum Opinion and Order*, 13 FCC Rcd 4998, 5027 ¶ 56 (Com. Car. Bur. 1998) (*Bureau Coding Digit Waiver Order*). This 60 percent includes LEC dumb payphones that were hardcoded at the switch. *Id.*, 13 FCC Rcd at 5007 n. 57. Smart payphones rely on the intelligence within the payphone unit to transmit payphone-specific coding digits. *Id.*, 13 FCC Rcd at 5010 n. 72. Dumb payphones, which are primarily owned by LECs, rely on LEC switches for functions and features to transmit payphone-specific coding digits. *See id.*, *Memorandum Opinion and Order*, 13 FCC Rcd 10893, 10894 n. 3 (Com. Car. Bur. 1998) (hereinafter *Bureau Per-call Waiver Order*).

[6] *Illinois*, 117 F.3d at 555, *see id.*, 123 F.3d at 694.

[7] *Illinois*, 117 F.3d at 563-64 (emphasis in original).

[8] *Illinois*, 117 F.3d at 565-66.

$100 million.[9] Moreover, the court rejected the Commission's use of annual toll revenue as an allocator between carriers of the compensation obligation, instead of each carrier's share of payphone-originated calls. The court upheld the Commission's use of net book cost for payphone asset valuation, pursuant to the Commission's affiliate transaction rules,[10] for LECs that maintain payphone assets on the LEC's books of account.[11] The court, however, disallowed the Commission's use of fair market value for payphone assets transferred by LECs to a separate affiliate or operating division as "plainly inappropriate under *Democratic Central*."[12]

4. After the *Illinois* remand, the Commission set the default rate for per-call compensation in the *Second Report and Order* at $0.284 for the intermediate period of October 7, 1997 through April 20, 1999. This compensation rate of $0.284 was reversed and remanded to the Commission by the United States Court of Appeals for the District of Columbia Circuit (the court).[13] According to the court, the Commission's explanation of its derivation of the $0.284 rate was plainly inadequate due to the Commission's failure to explain why a rate for coinless calls could be derived by subtracting costs from the $0.35 price charged for coin calls.[14] "Some articulation of this crucial assumption was required . . . ."[15] After this remand, the Commission set a default compensation rate of $0.24 per call, for the period beginning April 21, 1999 in the *Third Report and Order*.[16] On June 16, 2000, the court affirmed the default rate of $0.24, concluding that the Commission's bottom-up calculation of the default payphone compensation rate was a reasonable exercise of its jurisdiction.[17]

III. Discussion

5. **Interim Period**. The per-payphone compensation plan adopted herein replaces several aspects of the per-payphone compensation plan for the interim period that was vacated by the court in the *Illinois* decision.[18] The Commission will start its consideration of the issues remanded in the *Illinois* decision with a determination of the default compensation amount for the interim period.[19]

6. In the *Illinois* decision, the court ruled that the Commission's calculation of interim compensation at $45.85 per payphone per month was defective because the calculation was based on a surrogate rate of $0.35, representing local coin call costs. In particular, the court held that the Commission did not justify its conclusion that the costs of coin calls are similar to the costs of

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9 *Illinois*, 117 F.3d at 564-65.
10 47 C.F.R. § 32.27.
11 *Illinois*, 117 F.3d at 570.
12 *Democratic Central Committee of the District of Columbia v. Washington Metro. Area Transit Comm'n*, 485 F.2d 786 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 935, 94 S.Ct. 1451 (1974).
13 *MCI v. FCC*, 143 F.3d 606 (D.C. Cir. 1998).
14 *Id.*, 143 F.3d at 608.
15 *Id.*
16 *Third Report and Order*, 14 FCC Rcd at 2545.
17 *American*, 215 F.3d at 51.
18 Contrary to the assertion of several carriers, such as the Joint Comments at 24-25, the Commission is not engaging in retroactive rulemaking, but is engaging in implementing court mandates in the *Illinois* remand.
19 The Commission established a default rate to be applied only if the PSP and the carrier are unable to negotiate some other rate of compensation for compensable calls. *Second Report and Order*, 13 FCC Rcd at 1790; *see also First Report and Order*, 11 FCC Rcd at 20577.

subscriber 800 calls and access code calls.[20] In *American*, however, the court affirmed the Commission's calculation of $0.24 per call for default payphone compensation for the period beginning April 21, 1999.[21]

7. In the *Third Report and Order*, the Commission tentatively concluded that the cost-based $0.24 default compensation rate would also serve as an appropriate base for determining per payphone/per month compensation. No party has questioned that determination, and there is no reason to believe that the cost components on which we relied to derive the $0.24 rate are no longer accurate.[22] We will therefore employ the default rate as the starting point for interim period compensation. Nevertheless, we recognized in the *Third Report and Order* that certain adjustments would need to be made to the cost factors that make up the $0.24 rate, so the ultimate rate would be slightly different. We now make two adjustments, by removing the FlexANI cost component, as has been urged by a number of parties,[23] and by removing the payment delay component, to derive a per-call rate for the interim period of $0.229.

8. **FlexANI Cost Component Adjustment**. Our first adjustment is to remove the cost of installing flexible automatic number identification (FlexANI).[24] When it calculated the $0.24 default rate, the Commission included, *inter alia*, a component of $0.002 to provide a mechanism for carriers to recover the cost of installing FlexANI. However, these FlexANI costs are not properly included in an interim compensation amount because FlexANI costs were not recoverable at that time.[25] As the Commission explained in the *Third Report and Order*, LECs had not tariffed the cost recovery of FlexANI until after the end of the interim period, and thus, had not passed on the recovery of FlexANI costs to PSPs during the interim period. Accordingly, the

[20] *Illinois*, 117 F.3d at 563, 565.

[21] In the *Third Report and Order*, the Commission announced that the default compensation rate of $0.24 per coinless payphone call would remain in place through January 31, 2002. *Third Report and Order*, 14 FCC Rcd at 2647-48. "At the conclusion of the three year period, if parties have not invested the time, capital, and effort necessary to move these issues to a market-based resolution, parties may petition the Commission regarding the default amount, related issues pursuant to technological advances, and the expected resultant market changes." *Id.* at 2648.

[22] The Colorado Payphone Association and PocketScience filed separate reconsideration petitions to the *Third Report and Order*. In this order, the Commission does not address these two reconsideration petitions, but will address them in a separate order.

[23] Sprint Comments at 2; AT&T Comments at 1-2; Cable and Wireless USA, Inc. and Global Crossing North America, Inc. Comments at 4-5; Excel Communications, Inc., IDT Corporation, Network Plus, Inc., StarPower Communications, LLC and RCN Telecom Services, Inc. Joint Comments (Joint Comments) at 16; WorldCom Reply Comments at 6; One Call Reply Comments at 3; RBOC/GTE/SNET Payphone Coalition (Coalition) Reply Comments at 10 n. 5.

[24] Payphone-specific coding digits are not transmitted from smart payphones through the switch unless LECs use hardcoding or install FlexANI at the switch. FlexANI is a switch software feature that allows carriers to identify payphone-originated calls. *Bureau Coding Digit Waiver Order*, 13 FCC Rcd at 5010-11. FlexANI coding digits are transmitted as part of the ANI signalling sequence and are used by the receiving switch to identify the type of originating line or the type of call being made. As the one alternative to using FlexANI, a LEC may choose to employ hardcoding of additional embedded ANI ii payphone-specific coding digits for all of the switches in its service area. *Bureau Coding Digit Waiver Order*, 13 FCC Rcd at 5012. However, the Commission is not aware of any LEC that has chosen the hardcoding alternative. *Id.* Therefore, the Commission discusses only FlexANI in this order.

[25] "Since PSPs were not paying for [Flex]ANI during [the interim and intermediate] time periods, it would be inappropriate to compensate PSPs for such costs." Joint Comments at 16.

Commission specified in the *Third Report and Order* that, in calculating interim compensation, the \$0.002 for FlexANI would be deducted from the \$0.24 default rate.[26] Most comments filed after the release of the *Third Report and Order* argued that this adjustment of \$0.002 should be made by the Commission to prevent overcompensation for this FlexANI component.[27]

9. **Delay Cost Component Adjustment**. Our second adjustment is to remove the cost component that was included to reflect the time value of money during the typical four-month delay in payment to PSPs. When it calculated the \$0.24 default rate, the Commission also included a cost component of \$0.009 for a four-month payment delay.[28] The specified \$0.009 for this cost component is not applicable for interim compensation because it was calculated specifically for the four-month delay in payment for the per-call period. In the *Third Report and Order*, the Commission stipulated that this \$0.009 would be removed from the compensation rate for the interim period.[29] After the release of the *Third Report and Order*, no comments were received that opposed this adjustment for interim compensation.

10. **Interim Rate**. After \$0.002 for FlexANI and \$0.009 for the delay cost component are deducted from \$0.24, \$0.229 remains as the rate the Commission will use in calculating per-payphone compensation for the interim period. As noted below, however, interest shall be recoverable on unpaid compensation owed for the interim period.

11. **Call Estimate.** In the *First Report and Order*, we estimated, based on the data then available, that an average of 131 access code and subscriber 800 calls originated from each payphone each month.[30] That figure was multiplied by the compensation rate to yield the total per payphone/per month compensation amount. We now have new data that have been submitted by the parties. According to the American Public Communications Council (APCC), the "type of data relied upon by the Commission -- actual call records from payphones -- remains the most reliable available data for purposes of determining call volumes at independent PSPs payphones during the Interim Period."[31] We accordingly take this opportunity to adjust the average call figure to 148 access code and subscriber 800 calls per payphone per month.

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[26] *Third Report and Order*, 14 FCC Rcd at 2636.

[27] Sprint Comments at 2; AT&T Comments at 1-2; Cable and Wireless USA, Inc. and Global Crossing North America, Inc. at 4-5; Joint Comments at 16; WorldCom Reply Comments at 6; One Call Reply Comments at 3; Coalition Reply Comments at 10 n. 5.

[28] This cost component was added for four months of delay due to the quarterly payment procedure that is standard in the payphone industry. Typically, an IXC or LEC is billed in April for payphone calls originating during the first quarter of the year, and the IXC or LEC issues a check to the PSP by July 1.

[29] *Third Report and Order*, 14 FCC Rcd at 2636.

[30] A caller originates an access code call by dialing a sequence of numbers that connects the caller to the operator service provider (OSP) associated with that sequence, instead of the OSP presubscribed to the originating line. Access codes include 10XXX in equal access areas, with the three-digit XXX denoting a particular IXC. Access codes also include 950 Feature Group B dialing anywhere (950-0XXX or 950-1XXX). Of course, some OSPs use an 800 number as an access code. *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CC Docket No. 91-35, *Second Report and Order*, 7 FCC Rcd 3251 n. 1 (1992). Calls to a toll-free number assigned to a particular subscriber are called subscriber 800 calls, although this category includes calls made by dialing 800, 888 or 877 numbers. *First Report and Order*, 11 FCC Rcd at 20549, 20551.

[31] APCC Comments at 19.

12. Because of the nine-month deadline imposed in the Telecommunications Act of 1996, the 131 figure established in the *First Report and Order* was based on estimated call volume data that was limited because it was collected over a very short period of time, ranging from one to three months,[32] prior to the beginning of the interim period on November 7, 1996.[33] We now have before us data gathered over a much longer observation period, and collected during periods of time that overlap the interim period.[34] For these reasons, we deem the new data to be a better basis from which to predict typical payphone usage.[35] The updated data also more closely reflects call volumes during the 1997 interim period than the previous estimates that reflected 1996 call volumes. After a review of the record in this proceeding, the Commission concludes that a reasonable approach is to consider submissions of updated average monthly call volumes, collected over a longer period of time, and, most significantly, collected during time periods overlapping the interim period.

13. The Commission has studied all of the call volume estimates for access code and subscriber 800 calls submitted in this proceeding, and the various criticisms of each estimate. The call volume data range from 132 calls to 163 calls per month, all of which appear to be accurate numbers for the submitting company and none of which seems to be so errant that we can exclude it on that basis. Indeed, while the estimates vary, they do not vary by significant orders of magnitude and fall within a relatively narrow range. We are thus not able to rationally pick a single number from the range provided, nor are we aware of methodologies that would result in a better estimate than empirical observation. When faced with a similar situation in the *First Report and Order*, we averaged the numbers, and such an approach remains appropriate here. We are attempting, after all, to estimate the call volume from an average payphone, so that technique would yield a good assessment of that number. The average of the seven data points on the record is 148 access code and subscriber 800 calls per payphone per month.[36]

14. **Calculation**. In paragraphs 6-10 above, we determined that the per-call compensation rate should be $0.229. Multiplying that rate by the 148 compensable calls we have determined

[32] APCC collected call volumes during a three-month period in the spring of 1996 to use as the basis for an estimate of average monthly call volumes of access code and subscriber 800 calls. CCI and Telaleasing used one-month periods.

[33] *First Report and Order*, 11 FCC Rcd at 20603.

[34] The Coalition provides average monthly call volumes per payphone for three Bell Operating Companies (BOCs): 146.15 for BOC A; 131.88 for BOC B; and 140.61 for BOC C. *See* Letter to Rose M. Crellin, FCC, from Michael K. Kellogg (Mar. 27, 1998). Telaleasing Enterprises, Inc. (Telaleasing) reports 163 calls. Telaleasing Comments at 2. APCC reports 159 calls. *See* Letter to Magalie Roman Salas, Secretary, FCC, from Robert F. Aldrich, APCC at Attachment (Mar. 26, 1998). Communications Central, Inc. (CCI) reports 157 calls. CCI Comments at 8. Peoples Telephone Company, Inc. (Peoples) reports 139 calls. Peoples Comments at 6. There is no suggestion that any of the companies used a different methodology for its 1997 call volume study than the same company used for its 1996 call volume study.

[35] "The more data that can be subject to analysis, the better. Although the collection of large samples of data . . . can be expensive and tedious, the payoff in . . . accuracy will invariably justify the effort." Hirschey, Mark and James L. Pappas, *Managerial Economics*, 271, 1996, The Dryden Press, Harcourt Brace College Publishers, Orlando. *See* Fomby, Thomas G., R. Carter Hill, Stanley R. Johnson, *Advanced Econometric Methods*, 1988, Springer-Verlag, Inc., New York, and Maddala, G.S., *Introduction to Econometrics*, 1992, Macmillan Publishing Co., New York.

[36] We reject the various IXC arguments that our initial estimate of 131 calls was too high because the IXCs have not submitted any competing data of their own or called into serious question the data provided.

originated from the average payphone each month during the interim period yields a default compensation amount for the interim period of $33.892 per payphone per month.[37]

15. **Appropriate Payors**. In the *First Report and Order*, the Commission limited the duty to pay per-payphone compensation to carriers with annual toll revenue above $100 million. In the *Illinois* remand, the court found that the Commission acted arbitrarily and capriciously in requiring interim compensation payments only from IXCs with annual toll revenues over $100 million.

> [T]his limitation comes at a huge cost. For example, if small IXCs were included, they could be required to pay as much as $4 million *per month*. As the small IXCs concede, this amount is "far from *de minimis*." . . . Administrative convenience cannot possibly justify an interim plan that exempts all but large IXCs from paying for the costs of services received. Perhaps more fundamentally, the FCC did not adequately justify why it based its interim plan on total toll revenues, as it did not establish a nexus between total toll revenues and the number of payphone-originated calls.[38]

Later, the court characterized it as a Commission "decision that the 22 largest IXCs would have to pay millions of dollars per month for the costs of services received by other, smaller IXCs."[39] Accordingly, the court requires that the Commission base any interim compensation duty on payment for the payphone calls received by that particular carrier, and no particular carrier must be required to pay for payphone calls received by other carriers.

16. A number of commenters in this proceeding argue that LECs and all IXCs should be included as payors of interim compensation.[40] According to MCI, no commenter in 1997 opposed the inclusion of LECs, and only the RBOC/GTE/SNET Payphone Coalition (the Coalition)[41] and the Telecommunications Resellers Association (TRA) opposed the inclusion of small IXCs.[42] Several commenters note that LECs receive compensable calls from payphones, collect significant revenues from interstate and intrastate access code and subscriber 800 services, and promote such services.[43] In response to a public notice query as to whether LECs

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37 PSPs that are affiliated with LECs "will not be eligible for this interim compensation until the first day following their reclassification and transfer of payphone equipment along with the termination of subsidies, as discussed below." *First Report and Order*, 11 FCC Rcd at 20604; *First Reconsideration Order*, 11 FCC Rcd at 21293-94, 21307-08; *see also id.*, *Order*, 12 FCC Rcd 20997, 21013 (Com. Car. Bur. 1997) (hereinafter *Bureau Tariff Waiver Order*).

38 *Illinois*, 117 F.3d at 565 (emphasis in original).

39 *Illinois on rehearing*, 123 F.3d at 694.

40 These commenters include AT&T Corporation, Competitive Telecommunications Association (CompTel), Excel Telecommunications, Inc., LCI International Telecom Corporation (LCI), MCI Telecommunications Corporation (MCI), Sprint Corporation, WorldCom, Inc., CCI, MIDCOM Communication, Inc., America's Carriers Telecommunications Association, International Telecard Association, Cable and Wireless, Inc. and General Communication, Inc.

41 Initially, the Coalition was comprised of GTE Service Corporation, Southern New England Telephone Company, the Bell Atlantic Telephone Companies, BellSouth Corporation, Pacific Telesis Group, Southwestern Bell Telephone Company, and US West, Inc. Due to mergers and acquisitions, the Coalition currently is comprised of BellSouth Public Communications, SBC Communications, Inc. and the Verizon telephone companies.

42 MCI Comments at 6, citing Coalition Comments at 34 and TRA Comments at 34.

43 AT&T Reply at 37, MCI Comments at 6, CompTel Comments at 15.

should pay interim compensation,[44] the Coalition stated that it "can see no principled reason why LECs should be excluded. The Commission's per-call compensation system extends not only to interstate or interLATA calls, but also to intrastate and intraLATA toll calls; there seems to be no reason why the interim compensation obligations should not extend to intrastate and intraLATA toll calls as well."[45]

17. Significantly, the Commission specified in the *First Report and Order* that LECs (both incumbent and non-incumbent) must pay per-call compensation to the extent that LECs receive compensable payphone calls as "the primary economic beneficiary" of these payphone calls.[46] The Commission also specified that "all IXCs that carry calls from payphones are required to pay per-call compensation."[47] Upon further consideration of the language of the *Illinois* decision and the comments submitted on this issue after the court's remand, we conclude that the duty to pay interim compensation should not be limited to carriers with annual toll revenue above $100 million, but should include all IXCs, as well as LECs to the extent that LECs receive compensable payphone calls.[48]

18. For the reasons articulated in the *Second Reconsideration Order* and recently affirmed in the *Third Reconsideration Order*,[49] the Commission decides to omit resellers from a direct payment obligation for interim compensation because the first underlying facilities-based carrier "is reasonably certain to have access to the information necessary for per call tracking or to be able to arrange for per call tracking in its arrangements with switch-based resellers that complete the calls."[50] The elimination of resellers from a direct payment obligation should eliminate some of the non-payment problems described in the *Second Reconsideration Order*.[51]

19. **Carrier Identification**. In the *First Report and Order,* the Commission listed the 25 carriers who had a duty to pay interim compensation, the percentage calculated for each of these 25 carriers, and the amount per payphone per month to be paid by each of these 25 carriers.[52] For example, AT&T Communications, Inc. is listed with a percentage of 56.69 percent and an amount to be paid of $25.9923406 per payphone per month, while American Network Exchange, Inc. is listed with a percentage of 0.15 percent and an amount to be paid of $0.0689597 per payphone per month.

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[44] *Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding*, CC Docket No. 96-128, *Public Notice*, 13 FCC Rcd 4801 (1997) (hereinafter *Remand Public Notice*).

[45] Coalition Comments at 34-35.

[46] *First Report and Order*, 11 FCC Rcd at 20584 n. 293.

[47] *Id.* at 20584.

[48] The Coalition proposes that the Commission exempt carriers (LECs and IXCs) with toll revenues below $1 million per month for the Commission's administrative convenience. Coalition Comments at 34. The Commission rejects the exclusion of carriers with monthly toll revenues below $1 million, for the same reasons that the court in *Illinois* rejected the exclusion of carriers with annual toll revenues below $100 million.

[49] *Third Reconsideration Order*, 16 FCC Rcd at 20922.

[50] *Second Reconsideration Order*, 16 FCC Rcd at 8098, 8106.

[51] Further, this elimination conforms to the determination in the *First Report and Order* that the first underlying facilities-based carrier should pay compensation to a PSP. *First Report and Order*, 11 FCC Rcd at 20586.

[52] *First Report and Order*, 11 FCC Rcd at 20725-26.

20. Instead of providing a list of carriers with a duty to pay interim compensation as was done in the *First Report and Order*, the Commission finds it appropriate at this time to identify carriers obligated to pay interim compensation by reference to the Carrier Locator report of November, 1997. This report lists 3,832 companies that provided interstate telecommunications service as of June 30, 1997.[53] We note, however, that an IXC or LEC may have carried payphone-originated calls, but failed to file a worksheet or for some other reason was not included in the 1997 report. If an IXC or LEC did, in fact, carry payphone-originated calls during the interim period, we hold that a failure to file a worksheet and/or be included in the 1997 report does not relieve a carrier of the obligation to pay payphone compensation for the interim period.

21. **0+ Calls**. Payphone calls made by dialing 0+ are routed to the carrier presubscribed to that payphone.[54] Although the Commission made eligible for per-call compensation 0+ calls originating after October 6, 1997,[55] the Commission specifically excluded compensation for 0+ calls during the interim period.[56] In the *Illinois* decision, the court found that the "Commission's failure to provide interim compensation for 0+ calls is patently inconsistent with § 276's command that fair compensation be provided for 'each and every completed . . . call.'"[57] According to MCI, there is nearly unanimous support for compensating PSPs for 0+ calls, at least for PSPs that were not already receiving 0+ compensation for the interim period.[58] After consideration of the comments submitted and reexamination of the issue, the Commission concludes that there should be interim compensation for 0+ calls that were not otherwise compensated.

22. The Coalition urges the Commission to base interim compensation for 0+ calls on actual per-call tracking data from the interim period.[59] The Commission finds, however, that some IXCs did not retain per-call tracking data for 0+ calls originating at payphones during the interim period.[60] The Commission declines, therefore, to mandate that interim compensation for 0+ payphone calls be based on actual per-call tracking data from that period. As an alternative, MCI proposes that compensation for 0+ calls should be based on the interim compensation rate multiplied by an estimated average number of 0+ calls originating at payphones.[61] The Commission concludes that MCI's approach is reasonable and, therefore, adopts its proposal.

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[53] This report was compiled using information from 1997 TRS Fund worksheets and September 1997 Universal Service Fund (USF) worksheets. Each carrier that provides interstate service must file an annual TRS Fund worksheet. Most interstate telecommunications service providers are required to file a semi-annual USF worksheet with the USF Administrator (NECA). For each carrier, this report shows the types of services that the carrier provided. This publication should include all carriers that provided interstate telecommunication services in 1996, unless the company went out of business or merged or is not in compliance with filing requirements. It is possible for the TRS Fund Administrator at the National Exchange Carrier Association (NECA) to identify carriers who had an obligation to file, but did not file a TRS worksheet.

[54] 0+ calls are made by dialing 0, followed by a sequence of numbers for the telephone number called. 0+ calls include credit card, collect, and third number billing calls. *First Report and Order,* 11 FCC Rcd at 20549.

[55] *First Report and Order,* 11 FCC Rcd at 20569.

[56] *First Report and Order,* 11 FCC Rcd at 20604.

[57] *Illinois*, 117 F.3d at 566.

[58] MCI Comments at 6.

[59] Coalition Reply Comments at 17.

[60] *See, e.g.*, MCI Comments at 8; AT&T Comments at 23; One Call Reply Comments at 5.

[61] MCI Comments at 9.

23. For this purpose, the Commission needs to determine an average number of 0+ calls per payphone per month to use in the calculation. The record in this proceeding contains an APCC study which estimates an average of 15 0+ calls per payphone per month. The record also contains a Coalition study that supports an estimate of 24 0+ calls per payphone per month.[62] WorldCom derives an estimate of 17 0+ calls from data submitted earlier by APCC.[63] However, One Call Communications, Inc. (One Call), a small operator services provider primarily serving LEC payphones, objects to WorldCom's estimate of 17 0+ calls per payphone per month as unrealistically exaggerated by a whole order of magnitude, at least for LEC payphones.[64] In 2000, One Call estimated that there were no more than two 0+ calls per month at the typical LEC payphone "over the past few years."[65] The Commission declines to use One Call's estimate of two because it was submitted in 2000, with no indication that it was based on 0+ calls during the interim period, but instead indicated that it was based on call volumes from a few years before 2000. The increased use of prepaid phone cards since the interim period (that ended on October 6, 1997) may be reflected in a lower call volume of 0+ calls in the few years before 2000. In addition, to the extent that One Call provides operator services to LEC payphones, it is possible that One Call's call volume estimate may not be representative of nationwide 0+ call volumes for all PSPs.

24. WorldCom objects to the Coalition's estimate of 24 0+ calls per payphone per month as unrealistically high. We are taking into account WorldCom's objections by including WorldCom's estimate of 17 in our averaging of call volume estimates, thereby reducing the estimate from 24 to 18.6667. Sprint objects to the use of APCC's estimate of 15 calls per month due to APCC's failure to demonstrate that the estimate is statistically valid for the industry as a whole.[66] We have responded to Sprint's objection by averaging the APCC estimate with the estimates provided by WorldCom and the Coalition.

25. The Commission finds that the average of 18.6667 is a closer approximation to how many 0+ calls originated at payphones each month during the interim period than selecting to use alone either the Coalition's estimate of 24, APCC's estimate of 15, or WorldCom's estimate of 17. We see no basis to reject any of those numbers as inaccurate. Therefore, employing the same method the Commission used in the *First Report and Order* and in paragraphs 11-13 above for call volumes of access code and subscriber 800 calls, the Commission has averaged three estimates to derive an estimate of 18.6667 0+ calls per payphone per month. Multiplying a rate of $0.229, as derived in paragraphs 7-10 above, by an estimate of 18.6667 0+ calls per payphone per month yields $4.2747 per payphone per month as the default compensation amount for the interim period for 0+ calls that were not otherwise compensated ($0.229 x 18.6667 = $4.27467).[67] The Commission emphasizes, however, that a PSP that received compensation for 0+ calls

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[62] *See* Letter to Magalie Roman Salas, Secretary, FCC, from Robert F. Aldrich, APCC (Sept. 28, 1998).

[63] WorldCom Comments at 13, citing APCC Comments, July 1, 1996, "Industry Dial around Statistics, Page 1" and APCC Comments, August 26, 1997, Attachment 4, page 36.

[64] Coalition Comments at 37, Anderson Report at 15-16.

[65] One Call Reply Comments at 5.

[66] Sprint Reply Comments at 3-4.

[67] PSPs that are affiliated with LECs "will not be eligible for this interim compensation until the first day following their reclassification and transfer of payphone equipment along with the termination of subsidies, as discussed below." *First Report and Order*, 11 FCC Rcd at 20604; *First Reconsideration Order*, 11 FCC Rcd at 21293-94, 21307-08; *see also Bureau Tariff Waiver Order*, 12 FCC Rcd at 21013.

originated during the interim period is not entitled to this default interim compensation for 0+ calls.[68]

26. Many commenters on this issue assert that interim compensation for 0+ calls should be paid by the presubscribed IXC.[69] The Commission agrees that the IXC presubscribed during the interim period is the appropriate payor of interim compensation for 0+ calls that were not otherwise compensated.[70] As many commenters explained, the presubscribed IXC is the "primary economic beneficiary" of these calls. Indeed, the presubscription process ensured that, by definition, every 0+ call was routed to the presubscribed IXC for call completion, and no other carrier could have carried such calls.[71]

27. **Inmate Calls**. PSPs provide inmate telephone service in correctional institutions pursuant to a contract between the PSP and the correctional institution.[72] In turn, the PSP presubscribes the inmate telephones to a specific IXC pursuant to a contract between the PSP and the IXC.[73] Compensation to the PSP from the presubscribed IXC typically is covered by the terms of this second contract.[74] In the *Illinois* decision, the court rejected the Commission's exclusion of interim compensation for inmate service. Upon further consideration of the language in the *Illinois* decision and the comments submitted on this issue after the court's remand, the Commission concludes that default compensation must be paid for inmate service during the interim period, if the PSP was not otherwise compensated.

28. In the *First Report and Order*, the Commission considered and rejected arguments by various commenters that interim compensation should be higher for inmate service than for non-inmate payphone service.[75] The Commission specifically concluded "that inmate payphones are to receive the same compensation amount as other payphones, in the absence of a contract that prescribes a compensation methodology."[76] No additional probative evidence has been introduced into the record since that order to change the Commission's conclusion. Consequently, the interim compensation default amount for inmate services will be identical to

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[68] This is a default amount, used in the absence of a negotiated amount. *See Third Report and Order*, 14 FCC Rcd at 2569.

[69] "0+ calls are routed exclusively to the presubscribed carrier for a given payphone, and it is that presubscribed carrier that should be responsible for payment, no one else." Coalition Reply Comments at 17; *see* AT&T Reply Comments at 4 n. 12.

[70] With regard to the recipients of interim compensation for 0+ calls, some commenters urge us to include LEC-affiliated PSPs but exclude independent PSPs. We are unwilling to determine in this instance that no independent PSP may demonstrate that it did not receive compensation for the interim period for 0+ calls originating at a particular payphone. This is a fact-based determination that must be made for each payphone, whether the PSP is independent or LEC-affiliated.

[71] Joint Comments of Cable and Wireless USA, Inc. and Global Crossing North America, Inc. at 8-9.

[72] *Petition for Declaratory Ruling by Inmate Calling Services Providers Task Force*, RM-8181, *Declaratory Ruling*, 11 FCC Rcd 7362, 7364-65 (1996).

[73] *Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92-77, *Second Report and Order and Order on Reconsideration*, 13 FCC Rcd 6122, 6155-56 (1998).

[74] *First Reconsideration Order*, 11 FCC Rcd at 21252.

[75] *First Report and Order*, 11 FCC Rcd at 20579. In a separate order in this proceeding, the Commission is considering certain aspects of compensation for inmate service pursuant to the court's inmate remand. *Inmate Calling Services Providers Coalition v. FCC*, Order, No. 97-1046, 1998 WL 65655 (D.C. Cir. Jan. 30, 1998) (unpublished).

[76] *First Reconsideration Order*, 11 FCC Rcd at 21260.

the amount for non-inmate payphone service, $0.229.[77] In addition, as discussed previously with regard to 0+ calls,[78] the Commission finds that the presubscribed IXC during the interim period is the appropriate payor of interim compensation for inmate calls that were not otherwise compensated.

29. Accordingly, the IXC that was presubscribed during the interim period must compensate a PSP providing inmate service that was not otherwise compensated for the interim period,[79] at the rate of $0.229 per inmate call originating during the interim period, that otherwise would have been compensated.[80] The Commission emphasizes, however, that a PSP that received compensation for inmate service during the interim period is not entitled to this default interim compensation for inmate service.[81]

30. **Interest**. In the *Third Report and Order*, the Commission decided that "[b]ecause PSPs have not received full compensation for this [interim] period, we will allow the recovery of interest on the unpaid [interim compensation] amount."[82] We made a similar observation with respect to payments ultimately made for the "intermediate" period, which is the period from October 7, 1997 through April 20, 1999.[83] We did not, however, specify in the *Third Report and Order* what rate we would use to calculate those interest payments, and we turn now to that determination.[84]

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77 This is a default amount, used in the absence of a negotiated amount. *See Third Report and Order*, 14 FCC Rcd at 2569.

78 Virtually all calls originated by inmate phones are 0+ calls. *Remand Public Notice*, 13 FCC Rcd at 4805.

79 If the presubscribed IXC failed to retain the records of inmate calls originating during the interim period for which compensation now must be paid according to this paragraph, then that presubscribed IXC must file a waiver request with the Common Carrier Bureau, specifying an alternative number of inmate calls to be compensated for the interim period and the specific basis for its number. The specific PSP to be compensated will be allowed thirty (30) days to file an objection with the Common Carrier Bureau, specifying an alternative number of inmate calls to be compensated for the interim period and the specific basis for its number.

80 For example, if the policy or practice of the specific presubscribed IXC was not to pay compensation to a PSP for a collect call from an inmate when the called party refused to accept charges for that particular call during the interim period, then the specific presubscribed IXC is not required now to pay compensation of $0.229 for that particular inmate call.

81 PSPs that are affiliated with LECs "will not be eligible for this interim compensation until the first day following their reclassification and transfer of payphone equipment along with the termination of subsidies, as discussed below." *First Report and Order*, 11 FCC Rcd at 20604; *First Reconsideration Order*, 11 FCC Rcd at 21293-94, 21307-08; *see also Bureau Tariff Waiver Order,* 12 FCC Rcd at 21013.

82 *Third Report and Order*, 14 FCC Rcd at 2636 n. 427.

83 *Id*. at 2636 ¶ 198.

84 Several carriers assert that there should be no interest compensation at all. "As a result of the prior Interim Period compensation plan being vacated [in the *Illinois* decision], there was no outstanding debt to be paid [by carriers]. Therefore, . . . [t]here was not, nor could be, any default that would entitle the PSPs to a windfall in the form of interest payments." Joint Comments at 20. However, the Commission previously decided that interest would be paid for interim compensation, and we continue to believe that it would be unfair to deny any carrier owed compensation a reasonable payment for the time value of money. Otherwise, the owing party would enjoy a windfall.

31. The parties suggest a wide range of rates. The LECs urge us to use the 11.25% rate we used as a payment delay cost when we computed the cost of a call in the *Third Report and Order*.[85] This rate reflects the LECs' cost of capital.[86] The non-LEC PSPs ask us to use their own costs of capital, which generally exceed the LEC rate, sometimes by a substantial amount.[87] IXCs, on the other hand, advocate the use of interest rates established by the Internal Revenue Service (IRS).[88] On review of the matter, we determine that interest shall be paid on interim and intermediate period compensation at the rate established under Section 6621 of the Internal Revenue Code, 26 U.S.C. § 6621 (the "IRS rate").[89]

32. We have traditionally used the IRS rate in other settings involving payments reflecting the time value of money. For example, we have used the IRS rate for refund obligations in the investigation of Access Charge Reform tariffs,[90] as well as an interest rate on local number portability refunds,[91] and unauthorized pole attachment penalties.[92] The IRS rate, adjusted quarterly, was designed as an accurate way to assess appropriate interest on delayed payments, reflects generally prevailing rates in the market, and is thus useful in this context as a general measure of the time value of money. We accordingly find that rate to be reasonable for use by IXCs in computing interest owed on interim compensation payments, and for use by PSPs in computing interest for refunds of overpayments already received for the interim period.

33. We find for several reasons that it is inappropriate to use in this context the LECs' cost of capital, as we did in calculating the costs of a payphone call in the *Third Report and Order*. First, we used LEC capital costs in the latter context where payments would be predominantly flowing from IXCs to PSPs, and explicitly noted in the *Second Report and Order* that "[m]ost payphones . . . are owned by large local exchange carriers."[93] It was thus appropriate, as a general matter, to apply a rate reflecting the weighted average of debt and equity costs for the LECs, and it was reasonable to conclude this rate accurately represented the cost to an average payphone provider of payment regularly delayed. Here, as noted above, the interest rate could apply to payments flowing both ways, with IXCs generally paying out for the

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[85] *Third Report and Order*, 14 FCC Rcd at 2630-31.

[86] *See Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 5 FCC Rcd 7507 (1990).

[87] Petition of the Colorado Payphone Association for Partial Reconsideration, at 14-15, filed April 21, 1999.

[88] Sprint Comments at 5; AT&T Reply Comments at 7; One Call Reply Comments at 4; WorldCom Comments at 16.

[89] Appendix C provides IRS rates for the last quarter of 1996 through March 31, 2002 pursuant to a Revenue Ruling published December 26, 2001. *See* Revenue Ruling 2001-63, 2001-52 Internal Revenue Bulletin (I.R.B.) 606 (Dec. 26, 2001), 2001 WL 1563674 (IRS RRU). For interest in subsequent quarters, interested parties must use subsequent IRS Revenue Rulings.

[90] *Tariffs Implementing Access Charge Reform*, CC Docket No. 97-250, *Memorandum Opinion and* Order, 13 FCC Rcd 14683 (1998).

[91] *Long-Term Telephone Number Portability Tariff Filings of Ameritech Operating Companies, Pacific Bell, Southwestern Bell Telephone Companies, and US West Communications, Inc.*, 14 FCC Rcd 17339 (Com. Car. Bur. 1999).

[92] *Mile Hi Cable Partners v. Public Service Company of Colorado*, 15 FCC Rcd 11450 (Cable Serv. Bur. 2000).

[93] *Second Report and Order*, 13 FCC Rcd at 1806. In 1996, the Commission explained that there were approximately 1.5 million incumbent LEC payphones and approximately 350,000 independent PSP payphones. *First Report and Order*, 11 FCC Rcd at 6720.

interim period and PSPs generally paying out for the intermediate period.[94] The LEC capital cost clearly is not appropriate for all such transactions. Moreover, a unitary rate is extremely desirable in order to achieve certainty, to reduce disputes, and for reasons of fairness. We do not think it correct for a company that will both receive some money and pay some money to receive interest at one rate, but pay it at another rate. Further, given the one-time-payment nature of the "true ups" at issue here, a rate that reflects generally prevailing economics is most appropriate. A principle purpose in this situation is to avoid unjust enrichment to the party holding money owed to another carrier, and a commercially accepted measure such as the IRS rate will best achieve that goal, but will not be unfair or punitive. That is especially so given the potentially large payments that may be involved in this situation. Finally, as noted above, we relied on the LEC capital cost rate to reflect the unusual nature of billing and compensation in the payphone industry, where calls are aggregated by calendar quarter and bills are not typically paid for several months after that. While that approach remains fitting in its context, in the very different context of one-time interim and intermediate period true up payments, a commercially oriented rate is most suitable.

34. **Adjustments.** APCC urges the Commission to require overpaying carriers and underpaying carriers to make retroactive adjustments for the interim period between the two carriers. Otherwise, argues APCC, PSPs will find themselves in the position of middlemen paying out compensation to one carrier and collecting from another.[95] In contrast, AT&T argues that retroactive adjustments should be made only between carriers and PSPs. In considering this issue, we note that since November 7, 1996, the first day of the interim period, there has been substantial turnover in the telecommunications industry as companies merged, changed ownership, reorganized, changed names, or left the industry. There are numerous problems that arise as to how much interim compensation was paid, by whom and to whom, and further to determine who is a successor company. These problems would be complicated by requiring overpaying carriers and underpaying carriers to made retroactive adjustments. Moreover, the statute and our regulations contemplate payment relationships between carriers and PSPs, not the Commission establishing complicated intercarrier adjustments. Although the Commission does not prohibit carriers from entering into such arrangements with the agreement of the PSP, the Commission decides that, in the absence of such arrangements, retroactive adjustments are to be made only between carriers and PSPs.

35. **Intermediate Period**. The demarcation between per-payphone and per-call compensation was October 7, 1997. The Commission initially imposed a requirement that, by October 7, 1997, LECs provide payphone-specific coding digits to PSPs, and that PSPs in turn provide those digits from their payphones to IXCs.[96] The interim period of per payphone compensation ended on October 6 because it was the last day before this coding digit requirement went into effect. At the time the first two payphone orders were adopted in 1996,

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[94] In addition, some PSPs may need to make payments for the interim period as well, if they were compensated at a rate above the rate we set in this order or were paid by a particular IXC more than that same IXC now owes to the specific PSP for interim compensation now that LECs and IXCs with annual toll revenue of $100 million or below must pay interim compensation.

[95] APCC Reply Comments at 7.

[96] *First Report and Order,* 11 FCC Rcd at 20575; *First Reconsideration Order,* 11 FCC Rcd at 21265-66. The Bureau noted that as of October 7, 1997, only 60 percent of payphones were able to provide payphone-specific coding digits. *Bureau Coding Digit Waiver Order,* 13 FCC Rcd at 5027 ¶ 56. This 60 percent includes LEC dumb payphones that were hardcoded at the switch.

the Commission expected that payphone-specific coding digits would be transmitted for each payphone call on October 7, to enable per-call compensation for payphone calls to go into effect on October 7. Accordingly, in 1996 the Commission decided to begin the intermediate period on October 7, 1997. The FlexANI software necessary to identify and track each payphone call was not implemented by all LECs by October 6, 1997, however, so that each payphone call could be counted and tracked starting on October 7, 1997.[97] For this reason, some payphone compensation after October 6, 1997, the last day of the interim period, is due per call and some compensation is due per payphone, depending on when or if FlexANI was installed.[98] The intermediate period ended on April 20, 1999, the day before the effective date of the *Third Report and Order*.

36. **Intermediate Per-Payphone Compensation.** Carriers must compensate PSPs on a per-payphone basis during the intermediate period for each payphone for which the carrier did not receive payphone-specific coding digits. In prescribing a per-payphone compensation amount for the intermediate period, the Commission will use the same call volume estimate used above in prescribing a per-payphone rate for the interim period, *i.e*., 148 access code and subscriber 800 calls per payphone per month,[99] as well as the same rate as developed for the interim period. By using the rate for the interim period of $0.229 and an estimate of 148 access code and subscriber 800 calls per payphone per month, the Commission calculates the default per-payphone compensation amount for the intermediate period to be $33.892 per payphone per month.[100]

37. **Intermediate Interest**. Because the Commission has reduced the amount of per-payphone compensation for the intermediate period from the amount set in the *Second Report and Order* using the $0.284 rate, PSPs that received compensation from carriers during the intermediate period based on the $0.284 rate may now have overpayments for the intermediate period. In addressing these overpayments, the Commission stated,

> Just as IXCs will be required to compensate PSPs for interest on the money due the PSPs for the Interim Period, IXCs will be allowed to recoup interest for overpayments to the PSPs for the [Intermediate] Period. The same rate of interest shall apply for both the Interim Period and [Intermediate] Period.[101]

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[97] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Order*, 12 FCC Rcd 16387 (Com. Car. Bur. 1997).

[98] The per-call compensation obligation generally started the first day of the next quarter after FlexANI was installed, unless FlexANI is installed less than 30 days before the quarter when payment is due. An IXC may choose to pay on a per-call basis earlier than the required date. *Bureau Per-Call Waiver Order*, 13 FCC Rcd at 10904 n. 57.

[99] For a detailed discussion of the derivation of the 148 call volume number, see ¶¶ 11-13 above. We note that 0+ and inmate calls are excluded from the call volume total because the presubscribed IXC has been responsible for compensating PSPs for these calls since the first day of the intermediate period, October 7, 1997. *See Second Report and Order*, 13 FCC Rcd at 1780 ¶ 2.

[100] We note that, when payphone-specific coding digits are received by the carrier, the carrier is obligated to compensate PSPs on a per-call basis. Carriers should compensate PSPs on a per-payphone basis only when payphone-specific coding digits for a particular payphone are not received by the carrier.

[101] *See Third Report and Order*, 14 FCC Rcd at 2636 ¶ 198.

Therefore, the Commission requires that the same interest rate applied to the interim period, i.e., the applicable interest rate set by the IRS pursuant to Section 6621 of the Internal Revenue Code for refund obligations, also be applied to the intermediate period.[102]

38. **Carrier Identification for the Intermediate Period**. The Commission finds it appropriate to identify carriers obligated to pay intermediate compensation by reference to the Carrier Locator report of January, 2000. This report lists 4,144 companies that provided interstate telecommunications service as of December 31, 1998.[103] As noted above, a failure to file a worksheet and/or be included in the report of January, 2000 does not relieve a carrier of the obligation to pay payphone compensation for the intermediate period.

39. **Allocation Methodology**. In the *First Report and Order*, the Commission used annual toll revenue as a basis for allocation between the carriers of the duty to pay a specified amount per payphone per month as interim compensation. The court in *Illinois* rejected this allocation methodology and required that the compensation obligation be based on payment for the services received by that particular carrier. Consequently, the Commission must establish a nexus between the allocation methodology and the number of payphone calls routed to a specific carrier. The Commission is still considering the numerous proposals for various allocation methodologies received in this proceeding. Comments filed in this proceeding analyzing various proposed allocation methodologies emphasized the lack of a nexus between each proposed allocation methodology and the number of payphone calls routed to any specific carrier. For this reason, in letters dated December 20, 2001,[104] the Common Carrier Bureau requested that Qwest, Verizon, BellSouth and SBC submit, no later than January 22, 2002, the number of call attempts designated by coding digits of 27 (dumb payphone) or 70 (smart payphone), routed to an IXC point of presence or handled entirely by RBOC facilities, for 1997, 1998, and fiscal year 2001.[105] Now that the record in this proceeding has been supplemented in this manner, this specific call tracking data should allow the Commission to determine an allocation of the interim and intermediate payphone compensation obligations.[106] We realize that this will effectively defer the determination of compensation owed until we are able to establish a reasonable allocation methodology. However, to avoid further delay in establishing some of the preconditions for compensation, and to provide the industry with some guidance as to how we intend to proceed, the Commission decides to adopt this order at this time.

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[102] *See* ¶¶ 30-33.

[103] This report was compiled using information from 1999 TRS Fund worksheets. Each carrier that provides interstate service must file an annual TRS Fund worksheet. For each carrier, this report shows the primary type of services that the carrier provided. This publication should include all carriers that provided interstate telecommunication services in 1998, unless the company went out of business or merged or is not in compliance with filing requirements. It is possible for the TRS Fund Administrator at the National Exchange Carrier Association (NECA) to identify carriers who had an obligation to file, but did not file a TRS worksheet.

[104] These four letters have been incorporated into the record of this proceeding.

[105] The federal fiscal year began October 1, 2000 and ended September 30, 2001.

[106] According to the *Trends in Telephone Service* report, released in August of 2001, calls originating at 88.5 percent of the payphones in the United States were routed through the facilities of these four RBOCs, as of March 31, 1999. FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 8.5 (August 2001) (*Telephone Trends Report*).

40. **Remaining Remand Issues**. The Commission will determine in a subsequent order additional issues remanded in *Illinois*, such as an allocation methodology for the interim and intermediate periods, offsets of interim and intermediate overpayments as contemplated in the *Third Report and Order*,[107] and the valuation of payphone assets transferred by LECs to a separate affiliate or operating division.

IV. Procedural Matters

A. Final Paperwork Reduction Act Analysis

41. This decision has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and it contains no new or modified information collections subject to Office of Management and Budget review.

B. Supplemental Final Regulatory Flexibility Act Analysis on Reconsideration

42. Pursuant to the Regulatory Flexibility Act of 1980, as amended, *see* 5 U.S.C. § 604, the Commission's Supplemental Final Regulatory Flexibility Analysis for this order is attached as Appendix B.

V. Ordering Clauses

43. Accordingly, pursuant to the authority contained in 47 U.S.C. §§ 151, 154, 201-205, 215, 218, 219, 220, 226, 276 and 405, IT IS ORDERED that the policies, rules and requirements set forth herein ARE ADOPTED.

44. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Fourth Order on Reconsideration and Order on Remand, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[107] *Third Report and Order*, 14 FCC Rcd at 2636-37.

APPENDIX A

The Federal Communications Commission amends 47 C.F.R. Part 64 as follows:

1. The authority citation for Part 64 is revised to read as follows:

AUTHORITY: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 47 U.S.C. 276. 151, 154, 201, 202, 205, 218-220, 254, 276, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201-204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Add § 64.1301 to read as follows:

§ 64.1301 Per-payphone compensation.

(a) Interim access code and subscriber 800 calls. In the absence of a negotiated agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is $33.892 per payphone per month, for the period starting on November 7, 1996 and ending on October 6, 1997, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.
(b) Interim 0+calls. In the absence of a negotiated agreement to pay a different amount of compensation, if a payphone service provider was not compensated for 0+ calls originating during the period starting on November 7, 1996 and ending on October 6, 1997, an interexchange carrier to which the payphone was presubscribed during this same time period must compensate the payphone service provider in the default amount of $4.2747 per payphone per month, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.
(c) Interim inmate calls. In the absence of a negotiated agreement to pay a different amount of compensation, if a payphone service provider providing inmate service was not compensated for calls originating at an inmate telephone during the period starting on November 7, 1996 and ending on October 6, 1997, an interexchange carrier to which the inmate telephone was presubscribed during this same time period must compensate the payphone service provider providing inmate service at the default rate of $0.229 per inmate call originating during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.
(d) Intermediate access code and subscriber 800 calls. In the absence of a negotiated agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is $33.892 per payphone per month, for any payphone for any month in which compensation was not paid on a per-call basis, for the period starting on October 7, 1997 and ending on April 20, 1999.

(e) Post-intermediate access code and subscriber 800 calls. In the absence of a negotiated agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is $33.892 per payphone per month, for any payphone for any month in which compensation was not paid on a per-call basis, on or after April 21, 1999.

APPENDIX B

Supplemental Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (RFA),[108] an Initial Regulatory Flexibility Analysis (IRFA) was provided in the *Payphone NPRM*.[109] The Commission sought written public comment on the proposals in the *Payphone* NPRM, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was provided in the *First Report and Order*,[110] the *First Reconsideration Order*,[111] the *Second Report and Order*,[112] and the *Third Report and Order*.[113] This present FRFA conforms to the RFA, as amended.[114] To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in the preceding sections of this order, the rules and statements set forth in those preceding sections are controlling.

Need for, and Objectives of, the Rules

2. In adopting Section 276 in 1996, Congress mandated *inter alia* that the Commission "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone . . . ."[115] In this order, the Commission redetermines certain aspects of the per-payphone compensation to be paid to payphone service providers (PSPs) by interexchange carriers (IXCs) and local exchange carriers (LECs) for the interim and intermediate periods pursuant to the remand by the U.S. Court of Appeals for the District of Columbia Circuit in the *Illinois* decision.[116] To implement the remand, the Commission establishes a new estimate of completed access charge and subscriber 800 calls per payphone per month and an adjusted default compensation rate, and resolves the issue of compensation for 0+ and inmate calls, interest rates, and a number of other related matters.

Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

3. We received no comments in direct response to the FRFA in the *Third Report and Order*. We believe that our rules as adopted in this order minimize the burdens of the per payphone compensation scheme to the benefit of all parties, including small entities.[117]

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[108] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[109] *Payphone NPRM*, 11 FCC Rcd at 6762-63.

[110] *First Report and Order,* 11 FCC Rcd at 20691-20709.

[111] *First Reconsideration Order*, 11 FCC Rcd at 21345-48.

[112] *Second Report and Order*, 12 FCC Rcd at 1835-45.

[113] *Third Report and Order,* 14 FCC Rcd at 2637-47.

[114] *See* 5 U.S.C. § 604.

[115] Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 276).

[116] *Illinois*, 117 F.3d. at 555.

[117] *See* "Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered," ¶¶ 25-27 *infra*.

Description and Estimate of the Number of Small Entities to which Rules Will Apply

4. The RFA directs agencies to provide a description of, and an estimate of the number of small entities that may of the number of small entities that may be affected by the rules adopted herein, where feasible.[118] The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[119] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[120] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[121]

5. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[122] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[123] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

6. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. [124] According to the most recent *Telephone Trends Report* data, 1,335 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.[125] Of these 1,335 carriers, 1,037 reported that they have 1,500 or fewer employees and 298 reported that, alone or in combination with affiliates, they have more than 1,500 employees.[126] We do not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater

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[118] 5 U.S.C. § 604(a)(3).

[119] 5 U.S.C. § 601(6).

[120] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

[121] 5 U.S.C. § 632.

[122] 5 U.S.C. § 601(3).

[123] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[124] 13 C.F.R. § 121.201, NAICS code 513310.

[125] *Telephone Trends Report*, Table 5.3.

[126] *Id*.

precision the number of incumbent local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 1,037 or fewer providers of local exchange service are small entitles that may be affected by the rules and policies adopted herein.

7. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition for small providers of competitive local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[127] According to the Commission's *Telephone Trends Report* data, 349 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.[128] Of these 349 companies, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees.[129] The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of competitive local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 297 providers of competitive local exchange service are small entities that may be affected by the rules.

8. *Competitive Access Providers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPS). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[130] According to the Commission's most recent *Telephone Trends Report* data, 349 CAPs or competitive local exchange carriers and 60 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.[131] Of these 349 competitive access providers and competitive local exchange carriers, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees.[132] Of the 60 other local exchange carriers, 56 reported that they have 1,500 or fewer employees and 4 reported that, alone or in combination with affiliates, they have more than 1,500 employees.[133] The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of CAPS or other local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 297 or fewer small entity CAPS and 56 or fewer other local exchange carriers that may be affected by the rules.

9. *Local Resellers*. The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small

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[127] 13 C.F.R. § 121.201, NAICS code 513310.
[128] *Telephone Trends Report*, Table 5.3.
[129] *Id*.
[130] 13 C.F.R. § 121.201, NAICS code 513310.
[131] *Telephone Trends Report*, Table 5.3.
[132] *Id*.
[133] *Id*.

if it has 1,500 or fewer employees.[134] According to the Commission's most recent *Telephone Trends Report* data, 87 companies reported that they were engaged in the provision of local resale services.[135] Of these 87 companies, 86 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees.[136] The Commission does not have data specifying the number of these local resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of local resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 86 or fewer local resellers that may be affected by the rules.

10. *Toll Resellers*. The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[137] According to the Commission's most recent *Telephone Trends Report* data, 454 companies reported that they were engaged in the provision of toll resale services.[138] Of these 454 companies, 423 reported that they have 1,500 or fewer employees and 31 reported that, alone or in combination with affiliates, they have more than 1,500 employees.[139] The Commission does not have data specifying the number of these toll resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of toll resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 423 or fewer toll resellers that may be affected by the rules.

11. *Payphone Service Providers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to payphone service providers (PSPs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[140] According to the Commission's most recent *Trends in Telephone Service* data, 758 PSPs reported that they were engaged in the provision of payphone services.[141] Of these 758 payphone service providers, 755 reported that they have 1,500 or fewer employees and 3 reported that, alone or in combination with affiliates, they have more than 1,500 employees.[142] The Commission does not have data specifying the number of these payphone service providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of PSPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 755 or fewer PSPs that may be affected by the rules.

12. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers.

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[134] 13 C.F.R. § 121.201, NAICS code 513330.
[135] *Telephone Trends Report*, Table 5.3.
[136] *Id*.
[137] 13 C.F.R. § 121.201, NAICS code 513330.
[138] *Telephone Trends Report*, Table 5.3.
[139] *Id*.
[140] 13 C.F.R. § 121.201, NAICS code 513310.
[141] *Telephone Trends Report*, Table 5.3.
[142] *Id*.

Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[143] According to the most recent *Telephone Trends Report* data, 204 carriers reported that their primary telecommunications service activity was the provision of interexchange services.[144] Of these 204 carriers, 163 reported that they have 1,500 or fewer employees and 41 reported that, alone or in combination with affiliates, they have more than 1,500 employees.[145] We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 163 or fewer small entity IXCs that may be affected by the rules.

13. *Operator Service Providers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to operator service providers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[146] According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services.[147] Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees.[148] The Commission does not have data specifying the number of these operator service providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

14. *Prepaid Calling Card Providers*. The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[149] According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of prepaid calling cards.[150] Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees.[151] The Commission does not have data specifying the number of these local resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of prepaid calling card providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

15. *Satellite Service Carriers*. The SBA has developed a definition for small businesses within the category of Satellite Telecommunications. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[152] According to the Commission's most recent

[143] 13 C.F.R. § 121.201, NAICS code 513310.
[144] *Telephone Trends Report*, Table 5.3.
[145] *Id*.
[146] 13 C.F.R. § 121.201, NAICS code 513310.
[147] *Telephone Trends Report*, Table 5.3.
[148] *Id*.
[149] 13 C.F.R. § 121.201, NAICS code 513330.
[150] *Telephone Trends Report*, Table 5.3.
[151] *Id*.
[152] 13 C.F.R. § 121.201, NAICS code 513340.

Telephone Trends Report data, 21 carriers reported that they were engaged in the provision of satellite services.[153] Of these 21 carriers, 16 reported that they have 1,500 or fewer employees and five reported that, alone or in combination with affiliates, they have more than 1,500 employees.[154] The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of satellite service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 21 or fewer satellite service carriers that may be affected by the rules.

16. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[155] According to the Commission's most recent *Telephone Trends Report* data, 17 carriers reported that they were engaged in the provision of "Other Toll Services."[156] Of these 17 carriers, 15 reported that they have 1,500 or fewer employees and two reported that, alone or in combination with affiliates, they have more than 1,500 employees.[157] The Commission does not have data specifying the number of these other toll carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of "Other Toll Carriers" that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 15 or fewer Other Toll Carriers" that may be affected by the rules.

17. *Wireless Service Providers*. The SBA has developed a definition for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[158] According to the Commission's most recent *Telephone Trends Report* data, 1,495 companies reported that they were engaged in the provision of wireless service.[159] Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the rules.

18. *Broadband Personal Communications Service*. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined

[153] *Telephone Trends Report*, Table 5.3.
[154] *Id*.
[155] 13 C.F.R. § 121.201, NAICS code 513310.
[156] *Telephone Trends Report*, Table 5.3.
[157] *Id*.
[158] 13 C.F.R. § 121.201, NAICS code 513322.
[159] *Telephone Trends Report*, Table 5.3.

"small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[160] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[161] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[162] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[163] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F Block auctions, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

19. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[164] In the context of both the 800 MHz and 900 MHz SMR, a definition of "small entity" has been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million.

20. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[165] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[166] We will use the SBA's definition applicable to wireless companies, *i.e.*, an entity employing no more than 1,500 persons.[167] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

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[160] *See Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, *Report and Order*, 11 FCC Rcd 7824 ¶¶ 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

[161] *See Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, *Report and Order*, 11 FCC Rcd 7824 ¶¶ 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996).

[162] *See, e.g., Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 ¶¶ 115-17 (1994).

[163] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997).

[164] 47 C.F.R. § 90.814(b)(1).

[165] The service is defined in § 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

[166] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules. 47 C.F.R. §§ 22.757, 22.759.

[167] 13 C.F.R. § 121.201, NAICS codes 513321, 513322, and 51333.

21. *Fixed Microwave Services*. Microwave services include common carrier,[168] private-operational fixed,[169] and broadcast auxiliary radio services.[170] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not defined a small business specifically with respect to microwave services. For purposes of this Supplemental FRFA, we utilize the SBA's definition applicable to wireless companies--*i.e.*, an entity with no more than 1,500 persons.[171] We do not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

22. *39 GHz Licensees*. The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[172] An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[173] The SBA approved these regulations defining "small entity" in the context of 39 GHz auctions.[174] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. As mandated by the court in the *Illinois* decision, we established a compensation scheme for inmate telephone service, starting on November 7, 1996 through October 6, 1997, if the payphone service provider (PSP) was not otherwise compensated for its inmate service. As previously explained, the PSP presubscribes the inmate telephones to a specific IXC pursuant to a contract between the PSP and the IXC. If this previously existing contract failed to establish a

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[168] 47 C.F.R. §§ 101, *et seq*. (formerly Part 21 of the Commission's Rules).

[169] Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[170] Auxiliary Microwave Service is governed by Part 74 of the Commission's rules. *See* 47 C.F.R. Part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations and are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[171] 13 C.F.R. § 121.201, NAICS codes 513321, 513322, and 51333.

[172] *See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, *Report and Order*, 12 FCC Rcd 18600 (1997).

[173] *Id*.

[174] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

duty to count and track inmate calls for compensation purposes, or if the IXC failed to retain its records of the number of compensable inmate calls for the interim period, we have established in this order a waiver procedure that provides the maximum amount of flexibility for the IXC and the PSP, including small IXCs and small PSPs, to propose the number of inmate calls to be compensated for the interim period by the IXC presubscribed during the interim period.[175]

24. With this exception, this order imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this or related payphone proceedings.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. To minimize the economic impact and administrative burden for both payors and recipients of payphone compensation, including small entities, we required the payment of a flat fee of $33.892 per payphone per month for access code and subscriber 800 calls, originating from October 7, 1997 through April 20, 1999 for those payphones for which compensation is not paid on a per-call basis, and originating from November 7, 1996 through October 6, 1997, for all payphones. The payment of a prescribed flat fee of $4.2747 per payphone per month for 0+ calls, originating from November 7, 1996 through October 6, 1997, that were not otherwise compensated, minimizes the economic impact and administrative burden for both IXCs and payphone service providers, including small entities.

26. Some of both payors and recipients of payphone compensation are small entities. Over time, we have learned that steps we take to minimize the economic impact on payors of payphone compensation that are small entities diminish the compensation received by recipients of payphone compensation that are small entities, which in turn contradicts one of the mandates of Section 276 that payphone service providers should receive compensation for each and every completed call originating at one of their payphones. For example, to ease the burden of implementing the per call payphone compensation scheme on midsize and small local exchange carriers, the Common Carrier Bureau granted a waiver in 1998 to midsize and small local exchange carriers relieving such entities of the economic burden of installing FlexANI software on their switches. Payphone calls of small payphone service providers routed through these particular switches without FlexANI software may not be counted, tracked, and compensated on a per-call basis. As a result, compensation must be paid on a per payphone, not per call, basis. The Bureau limited such payphone compensation to 16 calls per month,[176] even if a small payphone service provider's payphone calls are more than 200 calls per payphone per month at a truck stop, for example, instead of 16 payphone calls per month.[177] Accordingly, in this order, we have found it necessary to balance the equities between these two groups of small entities.

27. In another example of the Commission's attempt to ease an economic impact, the Commission exempted in 1996 local exchange carriers and interexchange carriers with annual toll revenues of $100 million or less from the economic burden of paying per payphone compensation. The U.S. Court of Appeals for the District of Columbia Circuit vacated this

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175 *See* ¶ 29 n. 79, *supra.*

176 At a rate of $0.229 per payphone call as calculated in this order, compensation would be limited to $3.664 per payphone per month starting on November 7, 1996 through April 20, 1999, and to $3.84 per payphone per month after April 20, 1999.

177 *Bureau Per-call Waiver Order*, 13 FCC Rcd 10893 (Com. Car. Bur. 1998).

determination as arbitrary and capricious in the *Illinois* decision, partially because it would deprive recipients of payphone compensation of approximately $4 million per month, according to the court.[178] After the *Illinois* decision, we were asked to again exempt carriers with annual toll revenues of $100 million or less from the economic burden of paying interim compensation. In the alternative, we were asked to exempt carriers with monthly toll revenues of $1 million or less from the economic burden of paying interim compensation. In this order, we have followed the mandates of the court and decided not to exempt carriers based on the amount of toll revenue.

Report to Congress

28. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[179] In addition, the Commission will send a copy of this Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.[180]

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[178] *Illinois*, 117 F.3d at 565.

[179] *See* 5 U.S.C. § 801(a)(1)(A).

[180] *See* 5 U.S.C. § 604(b).

Appendix C

TABLE OF OVERPAYMENTS INTEREST RATES
FROM OCTOBER 1, 1996 THROUGH DECEMBER 31, 1998

Oct. 1, 1996	--	Dec. 31, 1996	8%
Jan. 1, 1997	--	Mar. 31, 1997	8%
Apr. 1, 1997	--	Jun. 30, 1997	8%
Jul. 1, 1997	--	Sep. 30, 1997	8%
Oct. 1, 1997	--	Dec. 31, 1997	8%
Jan. 1, 1998	--	Mar. 31, 1998	8%
Apr. 1, 1998	--	Jun. 30, 1998	7%
Jul. 1, 1998	--	Sep. 30, 1998	7%
Oct. 1, 1998	--	Dec. 31, 1998	7%

TABLE OF NONCORPORATE OVERPAYMENTS INTEREST RATES
FROM JANUARY 1, 1999 THROUGH MARCH 31, 2002

Jan. 1, 1999	--	Mar. 31, 1999	7%
Apr. 1, 1999	--	Jun. 30, 1999	8%
Jul. 1, 1999	--	Sep. 30, 1999	8%
Oct. 1, 1999	--	Dec. 31, 1999	8%
Jan. 1, 2000	--	Mar. 31, 2000	8%
Apr. 1, 2000	--	Jun. 30, 2000	9%
Jul. 1, 2000	--	Sep. 30, 2000	9%
Oct. 1, 2000	--	Dec. 31, 2000	9%
Jan. 1, 2001	--	Mar. 31, 2001	9%
Apr. 1, 2001	--	Jun. 30, 2001	8%
Jul. 1, 2001	--	Sep. 30, 2001	7%
Oct. 1, 2001	--	Dec. 31, 2001	7%
Jan. 1, 2002	--	Mar. 31, 2002	6%

TABLE OF CORPORATE OVERPAYMENTS INTEREST RATES
FROM JANUARY 1, 1999 THROUGH MARCH 31, 2002

Jan. 1, 1999	--	Mar. 31, 1999	6%
Apr. 1, 1999	--	Jun. 30, 1999	7%
Jul. 1, 1999	--	Sep. 30, 1999	7%
Oct. 1, 1999	--	Dec. 31, 1999	7%
Jan. 1, 2000	--	Mar. 31, 2000	7%
Apr. 1, 2000	--	Jun. 30, 2000	8%
Jul. 1, 2000	--	Sep. 30, 2000	8%
Oct. 1, 2000	--	Dec. 31, 2000	8%
Jan. 1, 2001	--	Mar. 31, 2001	8%
Apr. 1, 2001	--	Jun. 30, 2001	7%
Jul. 1, 2001	--	Sep. 30, 2001	6%
Oct. 1, 2001	--	Dec. 31, 2001	6%
Jan. 1, 2002	--	Mar. 31, 2002	5%

Appendix D

Comments Filed in Response to Interim Compensation Public Notice of September 26, 2000

1. The American Public Communications Council
2. AT&T
3. Cable and Wireless USA, Inc. and Global Crossing North America, Inc.
4. Excel Communications, Inc., IDT Corporation, Network Plus, Inc., StarPower Communications, LLC & RCN Telecom Services, Inc.
5. One Call Communications, Inc.
6. Sprint Corporation
7. WorldCom, Inc.

Reply Comments Filed in Response to Interim Compensation Public Notice

1. The American Public Communications Council
2. AT&T
3. Cable and Wireless USA, Inc. and Global Crossing North America, Inc.
4. Excel Communications, Inc.
5. National Payphone Clearinghouse
6. One Call Communications, Inc.
7. RBOC Payphone Coalition
8. Sprint Corporation
9. WorldCom, Inc.